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City of Berkeley



HOUSING AND DEVELOPMENT DEPARTMENT
CIVIC CENTER BUILDING
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6073

August 7, 1979

Mr. Jay Speakman
Citizens Budget Commission, Inc.
110 East 42nd Street
New York, New York 10017

Dear Mr. Speakman:

Your letter to Mr. Eugene Lee, Director of the Institute of Governmental Studies at the University of California has been forwarded to this Department for response.

Enclosed is a copy of Initiative Measure I, the Renters Property Tax Relief Ordinance passed by Berkeley voters on November 7, 1978. Briefly, Measure I provides for a rollback of rents to the June 6, 1978 level effective December 1, 1978 and a further rent reduction, effective January 1, 1979 through return of 80% of the landlords' property tax savings under Proposition 13 apportioned among rental units over the 1979 calendar year. In terms of the impact of Measure I, I am unable to provide you with much information. This office has answered more than 5,000 inquiries, principally from tenants and landlords, regarding the provisions of Measure I. Litigation is currently pending which challenges the constitutionality of Measure I. The calls we receive indicate both compliance and non-compliance on the part of landlords. To my knowledge, there has not been a study made to assess the overall impact of Measure I on Berkeley's housing market.

You will note that Measure I is essentially due to expire on January 1, 1980. At this time, it is uncertain whether this rent relief ordinance will be extended or possibly rewritten. The ensuing months will most likely determine the future of rent relief/rent control in Berkeley.

Sincerely,

Susan L. Wylie

SUSAN L. WYLIE
Chief, Housing Services Division

Enclosure

cc: Eugene C. Lee


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PROPOSED INITIATIVE ORDINANCE

INITIATIVE MEASURE I		
<p>Shall the People of the City of Berkeley adopt an initiative measure entitled, "Renter Property Tax Relief Ordinance of 1978"?</p> <p>Financial Implication: Little or no impact on City government</p>	For the Ordinance	
	Against the Ordinance	

RENTER PROPERTY TAX RELIEF ORDINANCE

Be it Ordained by the People of the City of Berkeley as follows:

Section 1: Title This ordinance shall be known as the Renter Property Tax Relief Ordinance of 1978.

Section 2: Purpose The passage of Proposition 13 on June 6, 1978 has provided some property tax relief to homeowners and owners of rental property without providing any tax relief to renters. The shortage of affordable rental property in the City of Berkeley, and rising rents resulting from this shortage, has produced a severe problem for a significant proportion of residential and commercial Berkeley renters, and has endangered the health, safety and welfare of all Berkeley residents. In view of this serious problem, it is necessary as well as fair that renters be provided with a portion of the benefits of the property tax relief resulting from Proposition 13. Therefore, the purpose of this Ordinance is to ensure that renters, who have shared the burdens of property taxes, will receive a fair share of the benefits of property tax reductions on rental property established by the passage of Proposition 13, enacting Article XIII A of the Constitution of the State of California.

Section 3: Definitions The following words or phrases as used in this Ordinance shall have the following meanings:

(a) **Rental Unit:** Any building, structure, or part thereof, or land appurtenant thereto, or any other real property rented or available for rent for any purpose located in the City of Berkeley, together with all services connected with the use or occupancy of such property.

(b) **Owner:** An owner, lessor, sublessor or any other person entitled to receive rent for the use or occupancy of any rental unit, or an agent or successor of any of the foregoing.

(c) **Renter:** A tenant, subtenant, lessee or sublessee of a rental unit, or any group of tenants, subtenants, lessees or sublessees of a rental unit.

(d) **Rental Agreement:** An agreement, verbal, written or implied, between an owner and a renter for the use or occupancy of any rental unit.

(e) **Property:** A parcel of real property which is assessed and taxed as an undivided whole.

(f) **Rent:** The consideration, including any bonus, benefit or gratuity demanded or received for or in connection with the use or occupancy of rental units or the transfer of a lease for such units including but not limited to monies demanded or paid for parking, pets, furniture, and subleasing, or for the installation and use of equipment and fixtures.

Section 4: Applicability This Ordinance shall apply to all real property which is being rented or is available for rent in whole or in part except for the following:

(a) Such property which is exempt from property taxes.

(b) Rental units in hotels, motels, inns, tourist homes and rooming and boarding houses which are rented primarily to transient guests for a period of less than fourteen (14) days.

(c) Units in non-profit cooperatives owned and controlled by a majority of the residents.

(d) Rental units in any hospital, extended medical care facility, asylum, or non-profit home for the aged.

(e) Residential property which is divided into a maximum of four (4) units where one of such units is occupied by the owner as her or his principal residence. However, for the purpose of applying the exemption in this subsection the term owner shall not include a sublessor or an agent of an owner.

Section 5: Partial Applicability to Subsidized Housing

(a) Any unit of subsidized housing exempted or preempted by Federal or State law or administrative regulation from the imposition of maximum rents by municipal ordinance shall not be subject to any maximum rents imposed by this Ordinance.

(b) Eighty percent (80%) of the property tax savings calculated pursuant to Section 8 of this Ordinance shall be passed on to renters of subsidized housing and apportioned among rental units in a property in a manner substantially consistent with Section 8 of this Ordinance unless such manner of apportionment among units is otherwise provided by Federal and or State law or administrative regulation or regulatory agreement with the governmental agency empowered to regulate such subsidized housing.

Section 6: Maximum Allowable Rent Until December 31, 1978 Every owner of rental property shall make the appropriate calculations as indicated in this Section for each property covered by this Ordinance.

(a) For the purposes of this Ordinance, the rent under the rental agreement in effect on June 6, 1978 for each rental unit covered by this Ordinance shall constitute the Base Rent. For rental units where no rent was in effect on June 6, 1978, the last rent in effect for that unit in the preceding six months shall constitute the Base Rent. For rental units where no rent was in effect on June 6, 1978 or in the preceding six months, the Base Rent shall be a good faith estimate of the average rent in effect for comparable units in the City of Berkeley on June 6, 1978.

(b) Commencing on the date on which rent is next due and payable following the date of adoption of this Ordinance and until December 31, 1978, the maximum allowable rent for any rental unit covered by this Ordinance shall be the Base Rent as determined in subsection (a) of this Section.

Section 7: Notice of Maximum Allowable Rent Until December 31, 1978 Within fifteen days after the adoption of this Ordinance, but in no event later than the date on which rent is next due and payable after adoption of this Ordinance, the owner shall provide the renter of each rental unit covered by this Ordinance with a written notice of the rent in effect until December 31, 1978 as determined by Section 6 of this Ordinance.

Section 8: Determination of Renter Property Tax Relief and Maximum Allowable Rent for Calendar Year 1979 Upon the issuance of property tax bills for 1978-79 reflecting the provisions of Article XIII A of the Constitution of the State of California, every owner of rental property shall make the appropriate calculations, as indicated in this Section, for each property and rental unit covered by this Ordinance.

(a) Total Base Rent

(i) For property which includes only rental units, the Total Base Rent shall be the sum of the Base Rents, as calculated pursuant to Section 6 of this Ordinance, for all rental units in that property.

(ii) For property used partly for rental purposes, a good faith estimate of the fair market rental value of the unrented portion of the property, including any owner-occupied portion, shall be made based on the average rent in effect on June 6, 1978 for comparable portions of property in the City of Berkeley. This estimate plus the sum of the Base Rents for all rental units in the property shall constitute the Total Base Rent.

(b) Property Tax Savings For the purposes of this Ordinance, Property Tax Savings shall constitute the total taxes due, including all installments, as listed on the 1977-78 property tax bill less the total property taxes due, including all installments, as listed on the 1978-79 property tax bill. A difference of less than zero shall be considered as zero.

(c) Property Tax Relief to be Allocated The Property Tax Relief to be Allocated among units in a property shall be eighty percent (80%) of the Property Tax Savings for that property.

Allocation of Property Tax Relief Among Units

(i) For property covered by this Ordinance, the Property Tax Relief as defined in subsection (c) of this Section shall be allocated among rental units and any unrented units in the property, including owner-occupied portions. Such allocation shall be made by determining the percentage of the Total Base Rent of a property that the Base Rent for each unit in that property constitutes, and multiplying this percentage by the Property Tax Relief to be Allocated for that property. For each rental unit in a property, the resulting dollar amount shall be the Renter Property Tax Relief to be apportioned over calendar year 1979.

(ii) In the case where Base Rents for different units in the same property are not directly comparable to each other, such as where rents for some but not all units are based on gross receipts, the necessary calculations shall be made so that the allocation of Renter Property Tax Relief is determined in an equitable manner consistent with the purposes of this Ordinance.

(e) Apportionment of Renter Property Tax Relief as Rent Reductions Over Calendar Year 1979 The Renter Property Tax Relief for each rental unit covered by this ordinance, as determined in subsection (d) of this Section shall be apportioned over calendar year 1979 by reducing the Base Rent of the rental unit by an amount equal to that unit's allocated Renter Property Tax Relief divided by the number of rent payments to be made in 1979 by the renter of the unit pursuant to the rental agreement. For example, if rent is paid on a monthly basis, one-twelfth (1/12) of the unit's allocated Renter Property Tax Relief shall be the monthly rent reduction over calendar year 1979. If a rental unit covered by this Ordinance is rented to a particular renter for only part of calendar year 1979, the Renter Property Tax Relief to be provided to that renter in 1979 shall be proportional to the percentage of time during 1979 the rental unit is rented to that renter.

(f) Rounding to Dollar Amount In order to simplify the calculations made under this Ordinance money amounts may be rounded to the nearest dollar.

(g) Maximum Allowable Rent for Calendar Year 1979 Commencing on January 1, 1979 and until December 31, 1979, the maximum allowable rent for any rental unit covered by this Ordinance shall be the Base Rent, as determined in Section 6 of this Ordinance, reduced by the apportioned Renter Property Tax Relief allocated for that unit as determined in this Section.

Section 9: Notice of Renter Property Tax Relief and Maximum Allowable Rent for Calendar Year 1979

(a) By December 15, 1978 or within fifteen days of the issuance of the property tax bills for fiscal year 1978-79, whichever is later, the renter of each rental unit covered by this Ordinance shall be provided by the owner with a written notice of the Renter Property Tax Relief for that rental unit and the rent in effect for that rental unit for calendar year in 1979 as calculated pursuant to Section 8 of this Ordinance. Such notice shall substantially follow the form set out in Appendix A of this Ordinance.

(b) When a rental unit covered by this Ordinance is rented to a new renter during calendar year 1979, the new renter shall be provided by the owner with a written notice of the allocated Renter Property Tax Relief for that unit and the rent in effect for that rental unit for calendar year 1979 as determined under Section 8 of this Ordinance. Such notice shall be provided by the date the first rent is due and payable and shall substantially follow the form set out in Appendix A of this Ordinance.

(c) After the date on which notices required by this Section must be issued, the owner must provide, within seven days of the receipt of a written request by a renter of a rental unit in the owner's property, a written list of the amounts of Base Rents and Renter Property Tax Relief for all units in the property including unrented units. Whenever possible, this list shall not identify specific units.

(d) A sublessor may satisfy the notice requirements of this Section by providing notices to sublessees within one week of receipt of the corresponding notice from the lessor.

Section 10: Renter Remedies

(a) If a notice required by this Ordinance has not been provided in good faith by the date required, a renter may notify the owner to issue such a notice within three days. If, after three days, the required notice has not been provided to the renter, the renter may take any or all of the following actions until compliance is achieved:

(i) A renter may withhold one-half of the rent otherwise due the owner. If the owner files an action for nonpayment of rent or an action for eviction for nonpayment of rent, the renter must deposit the withheld rent with the appropriate Court when and if the owner requests such deposit of rent with the Court, and if the Court so orders.

(ii) A renter may seek injunctive relief on behalf of herself or himself and on behalf of other affected renters to restrain the owner from demanding or receiving any rent until the owner has complied with this Ordinance.

(b) If an owner demands, accepts, receives or retains any payment in excess of the maximum allowable rent permitted by this Ordinance, a renter may notify the owner to return such excess payment or rescind any demand for excess payment within three days. If the owner has not returned any excess rent to the renter or rescinded any demand for excess rent within three days of such notice, the renter may:

(i) Take any of the actions set out in subsection (a) of this Section until compliance is achieved.

(ii) File a damage suit against the owner for actual damages. Upon proof of willful violation of this Ordinance by an owner, the renter shall receive a judgment of up to two hundred dollars (\$200) or three (3) times the amount by which the payment or payments exceeds the maximum lawful rent determined by this Ordinance, whichever is greater.

(c) The City Attorney may bring an action for injunctive relief on behalf of renters seeking compliance by owners with this Ordinance.

Section 11: Retaliation No owner may retaliate against a renter for the renter's assertion or exercise of rights under this Ordinance by threatening to bring or bringing an action for possession, causing the renter to quit involuntarily, decreasing any services or increasing the rent. In an action by or against the renter, evidence of the assertion or exercise by the renter of her or his rights under this Ordinance within three months prior to the alleged act of retaliation shall create a presumption that the owner's conduct was in retaliation for the renter's assertion or exercise of rights under this Ordinance. "Presumption" means that the Court must find the existence of the fact presumed, unless and until evidence is introduced which would support a finding of its nonexistence.

Section 12: Rent Increase Allowed

(a) Notwithstanding Sections 6 and 8 of this Ordinance, an owner may charge a rent greater than the rent allowed under Sections 6 and 8 of this Ordinance if the increased rent represents increased costs actually paid by the owner to the extent these costs exceed the twenty percent (20%) of the property tax savings retained by the owner. The total amount by which rents for a rental unit are increased under the provisions of this Section shall not exceed the total cost increases allowed under this Section reduced by the twenty percent (20%) of the property tax savings retained by the owner. Such increased costs must be related to the rental unit on which the increased rent is charged, and are limited to:

- (i) increased costs resulting from the sale or refinancing pursuant to a sale of a property which requires higher current payments on that property, provided such sale or refinancing is not made to evade provisions of this Ordinance;
- (ii) increases in taxes and/or fees related to the operation of the property except for State and Federal personal and corporate income taxes;
- (iii) increases in insurance premiums for the same type of coverage previously held on the property, and for new coverage required by law or the lenders;
- (iv) unavoidable increases in maintenance and operating expenses, including increases in the costs of utilities provided to the property at the owner's expense; and
- (v) increased costs of substantial rehabilitation or capital improvements undertaken after June 6, 1977 and on or before the date of adoption of this Ordinance, or with the informed consent of all renters in the property when such rehabilitation or improvements are undertaken after the date of the adoption of this Ordinance, or when such rehabilitation or improvements are undertaken as required to bring the property into compliance with the implied warranty of habitability and applicable housing codes, provided that such costs are apportioned over a good faith estimate of the life of such rehabilitation or improvements.

(b) An owner wishing to increase rents to cover increased costs under this Section must notify renters in writing at least thirty days in advance of such rent increase and provide a clear financial statement which explains and documents the increased costs which necessitate the rent increase.

Section 13: Rent Adjustments After January 1, 1980 If, on or after January 1, 1980, the rent for a rental unit covered by this Ordinance is increased by more than five percent (5%) on an annual basis above the maximum allowable rent determined according to this Ordinance for calendar year 1979, the notice to the renter of this increase shall contain a clear and detailed financial statement which documents the reasons for such an increase.

Section 14: Criminal Penalties An intentional failure to comply with the provisions of this Ordinance shall be a misdemeanor.

Section 15: Partial Invalidity If any provision of this Ordinance or application thereof to any person or circumstance is held to be invalid, this invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this Ordinance are severable.

Appendix A: The Form for the Notice of Renter Property Tax Relief and Maximum Allowable Rent for Calendar Year 1979

In accordance with the City of Berkeley Renter Property Tax Relief Ordinance of 1978, this notice informs you of a required reduction in rent for the rental unit located at _____. The amount of the rent reduction has been determined as follows:

The total 1977-78 property taxes which were due for the property which includes your rental unit was _____ dollars. The total 1978-79 property taxes due for this property is _____ dollars. The difference, or total tax savings for this property, reflecting the passage of Proposition 13 on June 6, 1978, amounts to _____ dollars. Eighty percent of this savings, or _____ dollars, is the total, property tax relief to be allocated among units of this property during the calendar year 1979.

The total Base Rent for the property which includes your rental unit, as determined by rents in effect on June 6, 1978, is _____ dollars. (If appropriate: This total Base Rent includes an estimated fair market rental value for owner-occupied units of _____ dollars, and an estimated Base Rent(s) for rental units in this property for which no rent was in effect on June 6, 1978 of _____ dollars, _____ dollars, etc.) The Base Rent for your rental unit is _____ dollars, which is equal to _____ percent of the total Base Rent for the property.

This percentage, multiplied by the total property tax relief for the property equals _____ dollars which is your proportionate share of the property tax relief for the year 1979. Since your rent is paid in _____ installments over calendar year 1979, each of your rental payments of _____ dollars per _____ (the Base Rent for your rental unit) shall be proportionately reduced by _____ dollars per _____, giving you a new rent of _____ dollars per _____.

Signature of owner _____
Date _____

ANALYSIS PREPARED BY THE CITY ATTORNEY OF BERKELEY FOR MEASURE I

This initiative measure, if adopted, would require owners of all rental property in the City of Berkeley, with certain exceptions, to pass along to tenants 80 percent of the property tax relief attributable to the passage of the Jarvis-Gann Initiative (Proposition 13, enacting Article XIII A of the California Constitution) on June 6, 1978.

This initiative measure, if adopted, would establish as the base rent of rental property the rent in effect on June 6, 1978. This initiative measure requires the maximum allowable base rent to remain in effect until December 31, 1978.

This initiative measure would require owners of affected rental property to notify tenants, within 15 days of the date this initiative measure is adopted, of the maximum allowable rent to be in effect until December 31, 1978.

This initiative measure would generally not apply to the following categories of rental property:

- Property exempt from taxation.
- Rental units in hotels, motels, and boarding houses where the occupancy normally does not exceed 14 days.
- Units in non-profit cooperatives.
- Residential rental units subsidized by federal or state funds.
- Fourplexes (or less), one unit of which is occupied by the owner.

With these exceptions, this proposed initiative measure would apply to all residential and commercial property rented, or available for rent, in the City of Berkeley.

Upon issuance of fiscal year 1978-79 tax bills reflecting Proposition 13 tax reductions, this initiative measure, if adopted, would require owners of affected rental property to calculate the "total base rent" for each property and each rental unit.

This initiative measure would further require the owners of affected rental property to allocate equitably among affected rental units not less than 80 percent of the "property tax savings" attributable to Proposition 13. "Property tax savings" is defined by this measure as total taxes due in fiscal year 1977-78, less total taxes due for fiscal year 1978-79.

This measure would further require that for calendar year 1979, the property tax relief to be passed along to tenants shall be apportioned equitably by reducing the

"base rent" of an affected rental unit by an amount equal to that unit's property tax relief allocation.

This measure would require that commencing January 1, 1979 and until December 31, 1979, the maximum allowable rent for any affected rental unit shall be the "base rent," less the property tax relief allocation for that unit.

Notwithstanding the maximum rent generally allowable under this initiative measure, this measure authorizes an owner to increase the maximum allowable rent if increased operating costs actually exceed the 20 percent of property tax savings retained by the owner. Any increased rent for a rental unit must be related to the increased operating costs for that unit. Operating costs for which rent may be increased are limited by this initiative measure to:

- Increased mortgage interest attributable to the sale or refinancing of the rental property.
- Increased taxes (except personal and corporate income taxes).
- Increased insurance, maintenance and utility costs.
- Substantial rehabilitation or capital improvement costs incurred between June 6, 1977 and November 7, 1978; where such costs are incurred between November 7, 1978 and December 31, 1979, the informed consent of all tenants is required unless these costs are incurred to comply with legal habitability requirements or applicable housing codes.

An owner proposing to increase rent must notify tenants 30 days in advance and provide a written statement of the reasons for the increase.

This initiative measure provides for a misdemeanor criminal penalty for an intentional failure by any owner to comply with its provisions.

This initiative measure also provides tenants with several civil remedies to obtain compliance by owners. Such civil remedies include withholding 50 percent of any rent due, commencement of legal action for injunctive relief to restrain the owners from attempting to collect rent which is due, or initiation of legal action to obtain actual money damages from an owner for willful violation of this measure.

This initiative measure prohibits an owner from retaliating against a tenant for the exercise of any of the methods specified to gain compliance.

A similar measure, sponsored by five members of the Berkeley City Council, will also appear on the November 7, 1978, ballot. If both measures receive a majority of votes cast, the measure receiving the greater number of votes shall prevail.

If adopted, this initiative measure will have little or no direct financial impact on the cost of local government.

MICHAEL LAWSON
City Attorney
City of Berkeley

CITY OF BERKELEY
CITY CLERK
CITY HALL
BERKELEY, CA 94704

CITIZENS BUDGET COMMISSION, INC.

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Auditors

HURDMAN AND CRANSTOUN

*Emeritus

July 16, 1979

Mr. Eugene C. Lee
Director
Institute of Governmental Studies
University of California
Berkeley, California 94720

Terri Piccolo
City of Berkeley
Housing & Community Development
2180 Milvia Street
Berkeley, CA 94704

Dear Mr. Lee:

The Citizens Budget Commission is a non-partisan, non-profit civic organization, founded to analyze the finances of the City of New York and to investigate the efficiency of the City government.

We are currently engaged in a study of the impact of rent control in New York. As part of that study includes a comparison of New York's rent control practices with those of other communities, we are interested in learning about rent control laws in Berkeley.

Specifically, we are interested in: a) the major statutory provisions; b) the guidelines and procedures by which rental increases are determined; and c) the impact of rent control. Any information you could provide would be most appreciated.

Thank you.

Sincerely,

Jay Speakman

Jay Speakman

JS:md

UNIVERSITY OF CALIFORNIA
ATTACHMENT MEMO
GEN 100 (8-72) Series 249-E25

Date

July 24, 1979

To

Terri Piccolo

From

Cheryl Duke/
Professor Lee

Subject

For	Approval (Signature)	Initial	Comments	Discussion	Information
Please	File	Return	Draft Reply	Take Action	Route to:

Message

Attached is the letter we discussed yesterday.

I appreciate your answering this for us.

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